



KAPLAN KIRSCH ROCKWELL

April 26, 2007

Via Ecoply

Honorable Vernon A. Williams
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: *Savage, Bingham & Garfield Railroad Company – Acquisition and Operation
Exemption – Union Pacific Railroad Company, Finance Docket No. 35002*

219177

*Utah Transit Authority – Acquisition Exemption – Union Pacific Railroad
Company in Salt Lake County, Utah, Finance Docket No. 35008*

219178

Dear Sir:

I am enclosing the Response of Utah Transit Authority, Union Pacific Railroad Company and Savage, Bingham & Garfield Railroad Company to Request of Utah Shipper Coalition for Joint Consideration and for a Procedural Schedule in the above referenced proceedings.

Sincerely,

Charles A. Spitulnik

Enclosure

133652

Attorneys at Law
Denver • New York • Washington, DC

Kaplan Kirsch & Rockwell LLP
1001 Connecticut Ave, N.W., Suite 905
Washington, DC 20036
tel. (202) 955-5600
fax (202) 955-5616
www.kaplankirsch.com

**Before the
Surface Transportation Board**

**Finance Docket No. 35002
SAVAGE, BINGHAM & GARFIELD RAILROAD COMPANY - -
ACQUISITION AND OPERATION EXEMPTION - -
UNION PACIFIC RAILROAD COMPANY**

**Finance Docket No. 35008
UTAH TRANSIT AUTHORITY - -
ACQUISITION EXEMPTION - -
UNION PACIFIC RAILROAD COMPANY
IN SALT LAKE COUNTY, UTAH**

**RESPONSE OF UTAH TRANSIT AUTHORITY,
UNION PACIFIC RAILROAD COMPANY AND
SAVAGE, BINGHAM AND GARFIELD RAILROAD COMPANY
TO REQUEST OF UTAH SHIPPER COALITION
FOR JOINT CONSIDERATION AND FOR A PROCEDURAL SCHEDULE**

The Utah Transit Authority ("UTA"), Union Pacific Railroad Company ("UPRR") and Savage, Bingham and Garfield Railroad Company ("SBG"), by undersigned counsel, hereby submit their joint response to the request of the Utah Shipper Coalition ("Coalition") for consolidated handling of the two above-captioned proceedings and for establishment of a procedural schedule. UTA, UPRR and SBG do not object to consolidation of the handling of these two proceedings, and for the reasons set forth below, request that the Board establish an expedited procedural schedule in this proceeding.

UTA, UPRR and SBG agree that this Board can evaluate the interests of all parties most efficiently if these two proceedings are handled together. UTA, UPRR and SBG have no objection to the Coalition's request to handle the two proceedings jointly.

Moreover, UTA, UPRR and SBG acknowledge and agree that the interests of the shippers must be protected. In fact the transactions covered by F.D. No. 35002 and F.D. No. 35008 have been structured by the parties to accomplish that objective.¹ All documentation relating to these transactions, except for the full interchange agreement and the agreement with BNSF (which is still in progress), has been submitted to this Board, and subject to the protective order that UTA, UPRR and SBG will seek (via a motion that will be filed after submission of this Response), UTA, UPRR and SBG will make available to other parties these and any other documents that are relevant and appropriately requested pursuant to the Board's discovery rules

UTA, UPRR and SBG object to the sixty day procedural schedule proposed by the Coalition. The interests of the shippers that make up the Coalition that will be allegedly harmed or damaged (which interests have still not been specifically disclosed or identified, though the Coalition has had substantial opportunity since the Coalition first sought a stay of the proceedings in F.D. No. 35002 to set forth and state their alleged concern over the impact of the proposed transactions on the freight service they require) will be adequately served by the procedural schedule set forth below.

The transactions described in the documents already before the Board in these two proceedings confirm their limited scope, and when examined, can only cause this Board to wonder, in the words of a well-known television commercial, "Where's the Beef?" The transaction documents before this Board already confirm that there is a five hour window available for provision of freight service on this line. Further, UPRR has agreed to enhance the efficiency of the operation by pre-blocking traffic before it leaves the UPRR yard. See UTA's

¹ See, e.g., UTA Motion to Dismiss the Notice of Exemption, filed in F.D. No. 35008 on April 20, 2007, VS George Sturm, at 2 para. 4 ("UPRR and SBGR reached this agreement in response to concerns about potential congestion in the Midvale Yard and SBGR's ability to complete its scheduled freight service within the five (5) hour freight window provided by UTA.")

Motion to Dismiss the Notice of Exemption, filed in F.D. No. 35008 on April 20, 2007, VS George Sturm. And, notwithstanding the Coalition members' assertions about the volumes of likely traffic on this line, the facts suggest that the impact of these transactions will be very limited. In addition to noting that the transaction does no more than potentially change the hours at which the shippers will receive service, UPRR's Warren Wilson, Senior Director – Rail Line Planning, by declaration filed in F.D. No. 35002 March 26, 2007 at 2-3, describes the volume of traffic that has moved on the Bingham Industrial Lead as follows.

Now, let's look at what the actual traffic really is. UP handled 1,695 carloads for the shippers on the two lines in 2005, and 1,564 carloads in 2006, which is nowhere near the 3,100 carloads per year shown in the petition [for stay that the Coalition members sought in F.D. No. 35002] (these industries are served only by UP, so this is all the rail traffic they generated). This represents less than 5 cars a day, hardly a significant amount of traffic [footnote omitted]. ... [The Coalition] then goes on to describe the "traffic congestion" that supposedly exists (p.4). I do not believe that anyone in the rail industry could call branch lines "congested" that host only about 7 trains a week (5 UP, 2 Utah Ry.).

Id. (emphasis in original). Moreover, Mr. Wilson has explained that UPRR and UTA have a history of working successfully together to ensure that the interests of both freight shippers and passengers are served. For over 14 years, UPRR and UTA have shared operations on UPRR's Provo Subdivision, which UTA acquired in 1993 and on which UTA now operates light rail service. That line still handles the same volume of freight traffic as it did before the transaction. *Id.* at 3. That freight service is in addition to the 30,000 passengers per day that UTA handles in 142 train movements on the same double track rail line.

To address transactions of such limited scope, in which most of the documents are already in the hands of the shippers or their counsel, an extended discovery period is not required. Moreover, delaying implementation of the transaction will adversely affect the parties. UTA is relying on public funding to implement this transaction and has structured the timing of

the transaction to comply with the other transaction review (including environmental review) processes, and faces the potential of loss of funds if the transaction is not timely implemented. UTA expects a Record of Decision ("ROD") with respect to the transaction on or about June 25, 2007, and will shortly thereafter begin construction. The federal funding should be authorized shortly after the ROD is issued. If UTA does not own the property by June 25, 2007, the FTA will delay issuance of the ROD. Delay in the ROD will delay funding. Delays in funding will delay the commencement of construction. Delay in construction will delay the implementation of the extended UTA service, which will be directly contrary to the public interest that promotes safety and increased transit options. UTA, UPRR and SBG acknowledge that the Board needs to confirm their representations to this Board about the freight railroads' ability to fulfill their common carrier obligations within the five hour freight window. However, the limited scope of this transaction and the need for avoiding delay of the transaction schedule justify the following expedited procedural schedule:

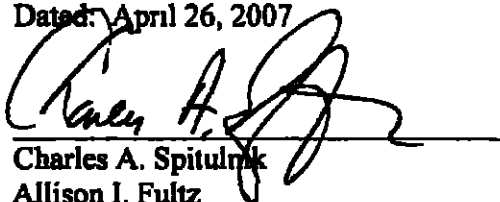
- A. May 2 – All parties submit any discovery requests to any other party for documents or information not already provided.
- B. May 9 – Responses to discovery due
- C. May 16 – Coalition statement and argument due
- D. May 23 – Response
- E. June 6 – STB decision

With respect to discovery by the Coalition, UTA, UPRR and SBG submit that Shipper Coalition should be required to limit discovery to: (1) clarification as to why the proposed daily 5-hour rail freight service window will not be sufficient to serve the needs of the Coalition members; and (2) facts that support the argument that UTA is acquiring rights and obligations

that include the freight common carrier obligation for Bingham Industrial Line that is the subject of these proceedings.

WHEREFORE, and in view of the foregoing, UTA and UPRR respectfully request this Board to establish the expedited procedural schedule described above.

Dated: April 26, 2007



Charles A. Spitulnik
Allison I. Fultz
Kaplan Kirsch & Rockwell LLP
1001 Connecticut Avenue, N.W.
Suite 905
Washington, D.C. 20036
(202) 955-5600
cspitulnik@kaplankirsch.com
afultz@kaplankirsch.com

Counsel for Utah Transit Authority

Respectfully submitted,



Mack H. Shurnate, Jr.
Senior General Attorney
Union Pacific Railroad Company
101 North Wacker
Room 1920
Chicago, IL 60606
(312) 777-2055
mackshurnate@up.com

Counsel for Union Pacific Railroad Company



Robert P. vom Eigen
Foley & Lardner
3000 K Street, N.W.
Suite 500
Washington, D.C. 20007-5143
(202) 672-5367
rvomeigen@foley.com

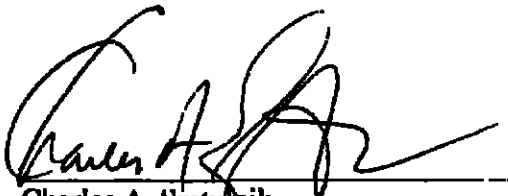
Counsel for Savage, Bingham & Garfield
Railroad Company

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Certificate of Service

I hereby certify that on this 26th day of April, 2007, I caused to be served a copy of the foregoing RESPONSE OF UTAH TRANSIT AUTHORITY, UNION PACIFIC RAILROAD COMPANY AND SAVAGE, BINGHAM AND GARFIELD RAILROAD COMPANY TO REQUEST OF UTAH SHIPPER COALITION FOR JOINT CONSIDERATION AND FOR A PROCEDURAL SCHEDULE to be served by first class mail, postage prepaid, and via Email upon:

Thomas F. McFarland
208 South LaSalle Street, Suite 1890
Chicago, IL 60604


Charles A. Spitulnik

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